Checks against atrocities

The Supreme Court, in its recent judgment in *Subhash Kashinath Mahajan v. State of Maharashtra*, has stirred up a debate which is bound to impact the law and policy on the prohibition of the practice of untouchability and prevention of atrocities against Scheduled Castes (SCs) and Scheduled Tribes (STs) in India.

The empirical question of whether the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is really being misused by the filing of false cases (which is the basis for the judgment) needs to be addressed by looking at the available data.

While it is true, as contended before the court, that National Crime Records Bureau (NCRB) data show that 5,347 false cases involving SCs and 912 false cases involving STs were registered in 2016, it should be noted that these constituted only 9% and 10%, respectively, of the total number of cases that were to be investigated by the police in that year. This would suggest that only about one out of 10 cases filed is false.

The question that arises is whether the imposition of severe restrictions, on registration and arrest, for all cases under the Act is justified. The other facts sought to be canvassed before the court appear to be more anecdotal than based on concrete statistical data. Thus, there appears to be little evidence that the Act is being rampantly misused. On the contrary, there is plenty of evidence to support the view that the SCs/STs are victims of rising crime each year. NCRB data show that in the past 10 years, crimes against SCs have risen by 51% (27,070 cases in 2006 and 40,801 crimes in 2016 were reported). Against STs it was by 13% (5,791 in 2006 and 6,568 cases in 2016 were reported). Studies by the National Law School of India University and Action Aid India have shown that religious, social and other disabilities involving the practice of untouchability continue to be widespread in India. Thus, there is much empirical evidence to support the stand that the Act needs to be strengthened — not weakened.

Legislation on untouchability and atrocities against SCs/STs arguably constitutes a radical departure from the usual approach of the criminal justice system. Unlike other offences, untouchability is an offence under the Constitution — Article 17 prescribes that ‘the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law’. Along with Articles 14, 21 and the rest of them, Article 17 is thus exalted to the position of a fundamental right However, despite the laws, it is generally accepted that Article 17 has not succeeded in achieving its mandate largely due to inadequate enforcement, in turn leading to low conviction rates and a huge pendency of cases.

Consequently, the legislative trend has been to progressively make the penal law tougher. In 2016, several amendments were introduced to strengthen the 1989 Act such as: including more acts as atrocities; increasing the quantum of punishment for the offences defined as atrocities; imposing an enhanced duty on public servants such as police officers who are required to enforce the Act; constituting special and exclusive courts to try offences under the Act; introducing time limits for investigation and trial; providing enhanced state machinery for arrest, investigation and trial; using presumptions to make convictions easier; and detailed regulation of the rights of victims and witnesses under the Act.

A study of the enactments under the umbrella of Article 17 would leave little doubt that, as noted by the apex court in various cases, offences under the untouchability and atrocities law constitute a separate and special class of offences. Further, they signal a drastic departure from the normal

approach to criminal justice. A study of the constitutional and legislative history relating to SCs/STs would reveal a unique jurisprudence that has evolved on the subject, which mandates a radically different and stronger approach to be adopted by the criminal justice system. In this context, the recent decision by the Supreme Court might be seen to run counter to the legislative trend of making the untouchability and atrocities laws harsher and tougher rather than softer.

The court's judgment is noteworthy for reminding us that the untouchability and atrocities laws, in its zeal to make the penal law stricter and more effective in the prosecution of offenders, cannot violate basic civil liberties as enshrined in Articles 21 and 22 (liberties articulated by a number of judges in *Maneka Gandhi v. Union of India*).

Even if the ruling on anticipatory bail is to be welcomed as protecting the accused from needless arrest and humiliation on the one hand and as a victory for human rights on the other, whether ordinary police powers of registering a first information report and making arrests in cognisable cases should be whittled down to this extent in atrocity cases is a matter of deliberation. False and frivolous complaints filed under untouchability legislation could also have been dealt with by other means which include directions for prompt investigation and prosecution of such offences by the police and others under the Indian Penal Code, 1860. It might have been more appropriate to have left the delicate balancing act between the enforcement of penal laws and the protection of civil liberties to Parliament, the body entrusted with the task of making our laws.

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With limited resources and time, it is crucial for States to assess which skills policies will make the biggest impact

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